

1 utilities poles.

2 Q You've been testifying in pole attachment
3 matters for some number of years. Correct?

4 A Yes, I have.

5 Q So you have a pretty good understanding of
6 what the act means and how the relative industries
7 have viewed the act, don't you?

8 A I have a good understanding of the
9 circumstances. I don't want to testify as to what
10 others have viewed it to be.

11 Q But is it your testimony today that Cox
12 Communications, Gulf Coast L.L.C., MediaCom Southeast,
13 Comcast Cablevision of Panama City, and Brighthouse
14 Networks L.L.C. have any attachments on Gulf Power's
15 poles that are not mandatory access attachments?

16 A You'll have to define for me what you mean
17 by "are mandatory access attachments." Because I
18 don't know if you're trying to get me to render an
19 opinion on that legal status of the act.

20 Again, I'm looking at it from the
21 standpoint, of an economic standpoint. Now, I
22 understand the law changed. I understand that that

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1 did change the legal aspect of that provision and
2 whether the power company was entitled to -- whether
3 it was, then, viewed as a taking and entitled to just
4 compensation. I understand all those legal
5 distinctions.

6 And I'm trying to be very careful,
7 particularly after, you know, with your motion to
8 strike my testimony -- I'm trying to be very careful
9 not to render any opinions as to those legal
10 distinctions.

11 Because before the mandatory access
12 provision, cable operators were attached to Gulf's
13 poles. And Gulf accommodated those attachments
14 through its normal make-ready process.

15 Q And Gulf Power had a right to kick them
16 off. Correct?

17 A But it didn't.

18 Q But it had that right.

19 A It didn't. It continued to do so. And
20 you know what? It was in Gulf Power's economic
21 interest to have them attached. Because Gulf Power
22 was able to enjoy rental revenues in excess of

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1 marginal costs.

2 So I viewed it, from an economic matter,
3 as being a win-win. It was in the utilities'
4 interest. And obviously, because it was voluntary,
5 the proof is in what happened. The utilities before
6 they were required to have -- before there was a
7 condition to mandatory access -- the utilities
8 voluntarily did permit those attachments, and did do
9 make-ready to accommodate those attachments and were
10 able to enjoy the rental revenues as well as certain
11 enhancements to their plant that went with the make-
12 ready process. Because you had third-party attachers
13 paying for the make-ready work, in a sense, helping to
14 increase the value of your plant.

15 So I look at what happened under the
16 voluntary situation, where the attachments took place.
17 I understand the legal status changed. But in terms
18 of the actual operating environment, I did not see a
19 change. And that's the basis of my answer.

20 Q You don't think it's a operational change
21 to take away Gulf Power's right to say no to a cable
22 operator?

1 A I don't view that as an operational
2 change. I view that as a legal change. And I
3 certainly understand that the power companies have
4 certainly pursued a regulatory and legal strategy that
5 builds on that change.

6 Q So in your view taking away Gulf Power's
7 right to say to say no to the cable operators is just
8 no big deal.

9 A You're asking me no big deal. I don't
10 know. If you want to specify. Obviously to Gulf
11 Power, it's a big deal. I understand that to the
12 utilities -- and through reading of some of their
13 white papers -- that that was perceived to be a very
14 important basis for their desire to seek higher rental
15 revenues.

16 Q It's a big deal to the cable companies
17 too, isn't it?

18 A Well, it certainly is a big deal if by the
19 change in that law, somehow entitled Gulf to seek
20 exorbitant rate increases. Obviously that would be a
21 big deal. Because before that mandatory access, the
22 utilities -- well, no. That's not even true, because

1 utilities had been trying to have courts determine
2 that pole attachments were a taking even before the
3 '96 Act, I believe.

4 Q You're referring to the Florida Power
5 court case?

6 A Yes, I am.

7 Q You understand that after the passage of
8 the 1996 Act, the courts did determine this was a
9 taking?

10 A Yes. But what I'm trying to say is even
11 before the Act, even before that legal change, the
12 utilities had been advancing those same arguments.

13 Q And then, Florida Power Corp., that
14 argument was unsuccessful. Correct?

15 A Yes. That is correct.

16 Q And then, after the 1996 Act, the argument
17 was successful.

18 A Yes, but it was still determined that the
19 regulatory rate was a just compensation rate.

20 Q Ms. Kravtin, if you would, please turn to
21 Page 47 of your testimony. I want to talk to you
22 about the situations in your opinion where Gulf Power

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1 would be entitled to something in excess of the
2 regulated rate.

3 A Well, I should say that's not the criteria
4 in the Alabama Power decision. I mean their criteria
5 is the test of full capacity and lost opportunity set
6 forth the conditions under which the utility can seek
7 a rate in excess of marginal costs, as I understand
8 it.

9 Q Let's talk about your opinion as to the
10 circumstances under which Gulf Power can seek a rate
11 in excess of marginal costs. Is that a better
12 question for you?

13 A Yes.

14 Q First, I understand that under your view,
15 Gulf Power has to prove economic full capacity.
16 Correct?

17 A That is correct.

18 Q Which you've testified is impossible.

19 A I have not testified that it's impossible.
20 To the contrary, I've testified that it is possible.

21 Q You testified that it's --

22 A And I can cite you to that. If you give

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1 me a moment, I can find you the lines of my testimony
2 where I say that.

3 Q Well, why don't you let me ask a couple of
4 questions, and maybe we can clear this up? It's your
5 testimony that as long as capacity can be expanded,
6 that there's no such thing as full capacity.

7 A What my testimony is, that as long as
8 space could be made available through the routine and
9 normal practice of make-ready that Gulf Power has been
10 doing historically, voluntarily on its own to
11 accommodate its own uses and those others, that the
12 pole would not be considered to be at full capacity
13 from an economic standpoint.

14 Q So in your opinion, Ms. Kravtin, a pole is
15 only at full capacity when make-ready can no longer be
16 performed or due to some physical limitation or legal
17 limitation.

18 A Legal, physical -- if you're including
19 zoning, environment restrictions, those relating to
20 airport or airplane clearance spaces. There's host of
21 those, and I do believe Mr. Harrelson also goes into
22 some of those more technical conditions about soil or

1 topographical engineering-type considerations, as
2 well.

3 Q And those instances, you understand, are
4 few and far between?

5 A I understand them to be fairly limited
6 only by looking at Gulf's existing practices where
7 make-ready seems to be available and utilized in most
8 instances.

9 Q We're past that. We're talking about the
10 circumstances that you've just identified: soil,
11 zoning, FAA. Do you have any idea how many poles in
12 Gulf Power's network would meet your definition of
13 full capacity?

14 A No. But I don't think that's relevant to
15 the economic concept. I mean the way I'm looking at
16 it -- and I explained in my testimony -- that Gulf
17 Power and other utilities are currently enjoying a
18 rental rate and a combination of make-ready
19 reimbursement that is in excess of marginal costs.

20 So in my mind from an economic standpoint,
21 there's no loss to Gulf Power. There's no economic
22 cost subsidy. It's kind of more a win-win situation

1 for both the attacher and the owner. So it would not
2 seem to be an economic situation where I would expect
3 there to be, or there would need to be, a large number
4 of poles.

5 I'm looking at what would the economic
6 criteria be? If Gulf was in a position to not manage
7 its pole plant or not perform these routine procedures
8 for the sole purpose of justifying a higher rate, that
9 would not make economic sense to me.

10 Q You mentioned just then what Gulf Power
11 lost. And when you say lost, you're talking about
12 lost in an accounting sense. Where are the dollars
13 that have left Gulf Power's account?

14 A Now, I'm not talking about lost in an
15 accounting sense. I'm talking about lost in an
16 economic sense. In terms of a true foregone
17 opportunity. I'm not testifying as an accountant.
18 And I think that the concepts of costs and marginal
19 costs are very different from an economic standpoint
20 than from an accounting standpoint. I think that was,
21 to me, came across clear in the testimony of Ms. Terry
22 Davis that I heard.

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1 Q Let's talk about loss in the economic
2 sense for a moment. I want you to look back at Gulf
3 Power Exhibit 42, Page 40, which is on the screen for
4 you. And I think you said yesterday that you cannot
5 identify which of these attachments is the cable
6 attachment.

7 A Well, in response to your question, I
8 didn't want to identify it, because I didn't know if
9 you were trying to trick me. And I'm not an engineer.
10 Those poles have some very odd configurations where
11 the power line is not in the power space.

12 I mean I understand generally that the
13 telecommunications ILEC takes the lowest attachment
14 and the power is supposed to be above. And generally,
15 you have the next attacher go from the bottom up. I
16 mean I understand generally what those are, so I think
17 I would have assumed it would be the second up. But
18 I didn't want to, right off the bat, identify it,
19 because I wasn't clear what you were trying to ask me
20 to do.

21 Q Were you finished?

22 A I'm finished. I'm sorry. The assumption

1 in your question, I just wanted to clarify for the
2 record.

3 Q When the cable operator attaches to this
4 pole -- Gulf Power Exhibit 42, Page 40 -- hasn't Gulf
5 Power lost the opportunity to use that space on the
6 pole?

7 MR. SEIVER: Objection. I'm not sure if he
8 means in the future or in the past -- establishing the
9 cable operators in some particular spot.

10 JUDGE SIPPEL: Well, this witness knows
11 pretty much what she can and can't handle on this.
12 I'm going to overrule the objection.

13 THE WITNESS: Okay. I believe we did have
14 a lengthy discussion on that subject yesterday. If
15 you're asking me to go through that discussion again -
16 -

17 MR. LANGLEY: I'm just asking --

18 THE WITNESS: -- and the court wants hear
19 it, then we can do it again. I think I indicated from
20 an economic standpoint -- I'm sorry, sir. I believe
21 he asked me that same question.

22 JUDGE SIPPEL: Okay. I don't mean to

1 interrupt you. I'm just saying just see if you can
2 answer his questions straight on.

3 THE WITNESS: Okay.

4 MR. LANGLEY: Do I need to ask the question
5 again, Ms. Kravtin?

6 THE WITNESS: Yes, please.

7 BY MR. LANGLEY:

8 Q Looking at Gulf Power Exhibit 42, Page 40,
9 when a cable operator attaches to that pole, hasn't
10 Gulf Power lost the opportunity to use that space
11 occupied by the cable company?

12 A And I would answer that as I answered it
13 yesterday. I don't think it necessarily prevents Gulf
14 Power from using that space, because I view poles as
15 dynamic. I know that they are constantly being
16 changed and rearranged. In fact, the very word,
17 rearrangement. So we take a snapshot of this picture
18 at one time, and then, we come back to it and the pole
19 has been changed or rearranged or augmented.

20 And those are the very characteristics of
21 poles that I believe are unique to poles that have to
22 be taken in consideration. And we have to look at

1 what this piece of infrastructure is and how it's
2 arranged.

3 I understand that I'm looking at a picture
4 that shows a wire at a particular place. So at that
5 point in time on that picture, you know, the cable
6 wire is there. But from an economic standpoint, it
7 doesn't alter that there may be space available on
8 that pole and that Gulf isn't actually out, in an
9 economic sense, from that use of space. It's not
10 preventing Gulf from getting additional rental
11 revenues for attachments of its because it can readily
12 make changes to those poles, that is as it has been
13 doing historically.

14 Q And let's talk about the rare
15 circumstances where a pole cannot be rearranged or
16 changed out to make room for another attacher. Are
17 you with me?

18 A Well, you're using the word "rare". I
19 think we discussed in the preceding answer, again,
20 that we'd have to look at all those conditions that
21 were enumerated as potential conditions where make-
22 ready would not be readily feasible.

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1 Q Okay. Let's talk --

2 A I expect those to be limited as to, again,
3 you're using a different word "rare". I don't know
4 what you're trying mean by that. I think it's a
5 factual matter and something that Gulf, I thought, was
6 expected to provide evidence in terms of, then,
7 showing on a pole-by-pole basis, which poles would
8 meet that criteria.

9 Q Okay. Let's talk about the limited
10 circumstances in which make-ready cannot be performed
11 to accommodate a new attacher. Are you with me?

12 A Yes.

13 Q It's your testimony that Gulf Power would
14 have to demonstrate the presence of an actual buyer
15 waiting in the wings. Correct?

16 A In terms of demonstrating the second
17 condition of the Alabama Power test, the lost
18 opportunity condition, that would require an actual
19 buyer of space that was turned away that could not be
20 accommodated or an actual use of the power company's
21 own that could not be accommodated due to the presence
22 of the cable attachment.

1 Q Do you believe that when the court says
2 "buyer waiting in the wings," they're talking about an
3 actual identifiable buyer that you could touch?

4 A I don't know if I could personally touch
5 that buyer. But in terms of demonstrating a foregone
6 opportunity, actual loss of money, yes. I don't know
7 how that can be done on a theoretical level, because
8 you wouldn't have a demonstrated loss.

9 Q So you do not believe that the buyer
10 waiting in the wings is a reference to the
11 hypothetical buyer.

12 A No. Because there would be no economic
13 impact that I could then, as an economist, identify.
14 As I understand, APCo is asking for -- well, it sets
15 forth conditions of full capacity. And then, if you
16 satisfy that, you move on to proving lost opportunity.

17 For the purposes of making a valuation of
18 what, then, the utility could seek to recover in
19 excess of marginal costs. Ultimately, we have to come
20 to a valuation. That would be the endgame here. What
21 is a valuation? So in order, from an economic
22 standpoint, to come to what that valuation would be,

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1 you have to have data to examine to make that
2 valuation.

3 Q And this data that you think is necessary
4 to make this valuation is, for example, a contract
5 that the additional actual attacher was going to sign?

6 A Well, as I indicate in my testimony, it
7 would have to be some demonstration that there was an
8 actual attacher who would be willing to engage in a
9 contract. And I'm not trying to comment legally as to
10 what is a executed contract or not. But some
11 demonstration that you have an actual buyer who would
12 be willing to pay what Gulf was charging both in the
13 rental rate and/or make-ready. Otherwise Gulf Power
14 and the other utilities would be in a position to say,
15 "Well, someone will be pay me \$1 million."

16 I've had talk about real estate where
17 someone would say, "I'd sell my house if someone would
18 pay me \$14 million." But, you know, realistically,
19 there is no such buyer that going to pay that rate.
20 So you have to understand, is this is a realistic
21 economic option for Gulf? Would it really be out that
22 money as opposed to just a phantom amount or an amount

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1 based on a lost monopoly rent extraction.

2 Q So Gulf Power would have to have
3 negotiated a deal with this buyer waiting in the
4 wings, and then, tell them, "No. You can't get on?"

5 A I think that the issue in determining
6 whether there would be a loss to Gulf Power, there
7 would have to be another party that was looking to
8 occupy that space. Otherwise, you would not be able
9 to demonstrate the loss.

10 Q But under your opinion, Ms. Kravtin, not
11 just another party, but another party who had agreed
12 to pay a price certain after negotiations.

13 A Yes. There would have to be an entity
14 that was looking to attach.

15 Q And in addition to having negotiated a
16 price certain that they would have paid to get on the
17 pole that they are going to be excluded from, Gulf
18 Power would also have to show that excluded person had
19 the financial wherewithal to meet their rental
20 obligations for the period of the contract. Correct?

21 A Yes. That sort of information is
22 routinely available in terms of what this entity -- is

1 it a real entity or is it a phantom entity? Are there
2 actual entities out there that are not shell
3 companies? They're actual functioning companies.

4 Q So Gulf Power would have to negotiate a
5 contract for a price certain and have done due
6 diligence on this potential attacher before it could
7 say, "Hey, there's another buyer out here for this
8 specific pole"?

9 A Yes.

10 Q Under your testimony.

11 A Yes.

12 MR. LANGLEY: Thank you. That's all I have
13 right now, Your Honor.

14 JUDGE SIPPEL: Redirect? Is there more
15 cross-examination from the bureau?

16 MR. LIEN: No.

17 JUDGE SIPPEL: Mr. Seiver?

18 MR. SEIVER: Ms. Corbin, could you put
19 Exhibit 42 on Page 40? Am I right?

20 REDIRECT EXAMINATION

21 BY MR. SEIVER:

22 Q Ms. Kravtin, Mr. Langley had been asking

1 you some questions about this particular pole in this
2 exhibit. Prior to sitting here today with Mr.
3 Langley, had you had a opportunity to look at this
4 particular picture if you remember?

5 A To be honest, I've looked at a lot of
6 pictures of poles that were in Mr. Harrelson's
7 testimony and other documents. I really couldn't say
8 whether I had seen that pole or not.

9 Q Do you remember seeing anything that
10 documented who the attachers were on that pole,
11 whether it's Gulf or Communications or some
12 combination?

13 A No.

14 Q Did you ever see any documents about what
15 rates were paid by the particular attachers on this
16 particular pole?

17 A No, I did not.

18 Q Do you remember if you saw any documents
19 as to what, if any, of the existing attachers had paid
20 in make-ready for that pole?

21 A No, I did not.

22 Q Did you see any documents that reflected

1 any amounts that any attacher might have paid for a
2 prior change-out of that pole?

3 A No, I did not.

4 Q And do you remember when Mr. Langley asked
5 you that Gulf had lost the opportunity from using the
6 space where a cable operator's facilities -- we assume
7 the cable operator's facilities are located on that
8 pole -- that you had made some determination as to the
9 value of that lost opportunity? Do you remember that
10 question or do I need to repeat that?

11 A Could you repeat that? I'm sorry.

12 Q Do you remember when Mr. Langley asked you
13 if Gulf has lost the opportunity of using the space on
14 the pole where a cable operator's facilities are
15 located?

16 A Yes. I remember that. Many times he
17 asked.

18 Q Did you render an opinion on what rate, if
19 any, compensates Gulf for that loss of opportunity?

20 A That the cable operator is occupying?

21 Q Correct.

22 A I think we discussed that Gulf is being

1 compensated for that space through the regulated rate.

2 Q Was there another lost opportunity that
3 you were focusing on, if any, when you were rendering
4 your opinion here as to what Gulf would receive
5 compensation for?

6 A I'm sorry. Could you repeat that
7 question?

8 Q Was there another lost opportunity other
9 than the one to rent to space where the cable
10 operator's facilities were located? Did you render
11 another opinion or any opinion in this case on what
12 rate would compensate Gulf for a different lost
13 opportunity?

14 A I think I testified that I could not
15 determine that there had been a lost opportunity
16 because of that space. Because what I knew -- when he
17 was pointing me to the use of the cable space -- was
18 that Gulf was receiving compensation for that space.
19 And one could not demonstrate that there had been a
20 lost opportunity to Gulf based on viewing this
21 picture.

22 Q Have you seen any evidence in your review,

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1 whether in documents or transcripts or any of the
2 materials you've looked at, that in your opinion
3 showed you that Gulf had lost any specific opportunity
4 to rent space on any of its poles to another entity?

5 MR. LANGLEY: Your Honor, I'm going to
6 object to that question because it's calling for a
7 legal conclusion about the evidence in the case.

8 JUDGE SIPPEL: No, it's not. I'll let the
9 question go. You can answer that question.

10 THE WITNESS: No. I think I had indicated
11 in my testimony that I have not seen any evidence that
12 Gulf had not been able to accommodate any other user
13 or use due to the presence of a cable operator. I
14 believe I cited to the deposition of Gulf with Ms.
15 Dunn.

16 JUDGE SIPPEL: And it's your fact. Go
17 ahead.

18 MR. SEIVER: Thank you.

19 BY MR. SEIVER:

20 Q Ms. Kravtin, you might also recall
21 yesterday Mr. Langley had asked you about the Telecom
22 formula as opposed to the cable formula under the FCC

1 rules?

2 A Yes.

3 Q Okay. Are you familiar with how the
4 telecom formula is calculated?

5 A Yes. I've made that calculation many
6 times.

7 Q And I think Mr. Langley had asked you --
8 and I'll try to state it right -- I was typing rather
9 quickly -- about whether the telecom formula as a
10 whole was consistent with cost causation principles in
11 the world of multiple telecom attachers. Do you
12 remember that particular inquiry?

13 A Well, I remember the inquiry. I don't
14 believe that was his question. I think his questions
15 was trying to get me to focus solely on the space
16 allocator and as to whether that was consistent with
17 the cost causation principles. And I think that I
18 answered -- well, you need to look at it as a whole.

19 And that as a whole, my testimony stands,
20 that it is consistent with cost causation principles
21 and certainly much more so than Gulf's replacement
22 cost valuation, which to me, has nothing to do with

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1 cost causation principles.

2 So I think my answer was that I thought,
3 as a whole, it was. But I was going to say with
4 regard to the space allocator, while it was generally
5 consistent, I still believe -- and I have testified on
6 numerous occasions before -- that the cable rate
7 formula whose space allocator, space factor is based
8 strictly on use, which is the ultimate cost causation
9 ideal, you know, was strictly inconsistent with cost
10 causation. But as a whole, that if the
11 telecommunications formula was in the context of the
12 expectation, there would be many, many attachers to a
13 utility pole.

14 Q And I believe -- and forgive me, I don't
15 want to retread unnecessarily, but just so I
16 understand -- is it a general statement that you made
17 that the telecom formula produces a rate generally
18 that is higher than the cable rate?

19 A Yes. It's generally higher, but how much
20 so will depend on the number of entities attaching to
21 the poles.

22 Q You preceded my next question. I was

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1 going to ask you do you have any understanding of how
2 the pole attachment rate produced by use of the
3 telecom formula varies, if at all, with multiple
4 attachers?

5 A Yes. Because in a space factor, which as
6 both an allocation is based on, the amount of useable
7 space plus unusable space, that is divided by the
8 number of entities. So the greater number of
9 entities, the smaller the additional increment.

10 The smaller the increase in the space
11 factor will be, because it's divided by the number of
12 entities, and then two-thirds of that is taken. So it
13 will continue to decrease as additional attachers are
14 accommodated on the pole.

15 Q Just so it's clear, what will continue to
16 decrease as multiple attachers are on the pole?

17 A The space factor. The space factor will
18 decrease. So one of the elements of the telecom
19 formula will decrease as the number of entities on the
20 pole increases. And it was the expectation going into
21 with the regulatory environment for telecommunications
22 carriers, that there would be more carriers attaching.

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